

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Examination of Exclusivity and Frequency)
Assignments Policies of the Private Land)
Mobile Services)

PR Docket No 92-235

To: The Commission

Opposition

The Industrial Telecommunications Association, Inc. ("ITA"), hereby submits its opposition to a "Petition for Partial Reinstatement of Application Filing Freeze Pending Clarification or Rulemaking" ("Petition"), filed by the Association of Public-Safety Communications Officials International, Inc. ("APCO") with the Chief of the Wireless Bureau.¹ This petition, requesting a partial stay of the Commission's rules promulgated in the above-captioned proceeding, is procedurally deficient and factually unsupported.

I. The APCO Petition is Untimely and Misfiled

1. Although styled as a petition for a "freeze," the APCO filing should be defined by the relief it requests. Insofar as the APCO petition asks the Commission to designate a separate pool

¹ On October 1, 1997, APCO also filed an "Emergency Petition of Clarification" in this proceeding. Insofar as the October 1, 1997, petition is referenced in the November 5, 1997 petition, ITA hereby registers its opposition to both pleadings.

for Public Safety entities in the 470-512 MHz general access pool, this pleading is a petition for reconsideration of the *Second Report and Order*, and is untimely.²

2. In the *Second Report and Order*, the Commission declined to establish specific pools in the band between 470-512 MHz:

[U]nlike our current approach to the other bands, where frequencies are allocated to a specific service or group of services, frequencies in the 470-512 MHz band are available to all eligibles on a first come, first served basis. Thus it would be impossible to divide these frequencies into different pools.

APCO requests that the Commission reconsider this decision and adopt the same two pool approach dictated for the VHF and UHF bands below 470 MHz, stating: "The Commission's rules must make clear, therefore, that certain frequencies in the 470-512 MHz band are reserved for public safety."³ The nature of the relief requested makes it clear that the APCO filing is a petition for reconsideration.

3. Because the *Second Report and Order* was published in the Federal Register on April 17, 1997, petitions for reconsideration had to have been filed by May 19, 1997.⁴ The APCO petition is untimely, and should be dismissed.

4. Further, the *Second Report and Order* was adopted by the full Commission *en banc* and was not an action taken pursuant to delegated authority. Section 1.106(a)(1) of the Commission's rules states that petitions requesting reconsideration of a final Commission action

² *Second Report and Order* (FCC 97-61), PR Docket No. 92-235, adopted February 20, 1997, released March 12, 1997.

³ APCO petition at 4.

⁴ See 47 C.F.R. § 1.429(d).

will be acted upon by the Commission.⁵ Because the APCO petition was submitted to the Bureau for action, it is misfiled, and must be forwarded to the full Commission for reconsideration.

5. Section 1.106(n) of the Commission's rules further states that the filing of a petition for reconsideration shall in no way "operate in any manner to stay or postpone the enforcement" of the Commission's decision.⁶ Actions taken by the full Commission may only be stayed by a special order of the Commission upon a showing of good cause.⁷ APCO has failed to present any facts that would support a claim that the public interest would be served by the stay requested.

II. The Stay Requested Would not Serve the Public Interest

6. APCO requests a stay of the acceptance of applications for those 12.5 kHz offset channels in the 470-512 MHz band located directly above and below incumbent public safety entities because it fears that these public safety entities will be subject to harmful interference, and that "non-public safety entities [will] apply for and obtain licenses for such 12.5 kHz channels, potentially blocking public safety access to additional channels in the 470-512 MHz band."⁸ However, APCO presents no evidence that such an undesirable outcome has, or will come to pass. In fact, recent events affirmatively show that APCO's fears are unfounded.

7. In the *Second Report and Order*, in anticipation of PLMR pool consolidation and the availability of the new offset channels, the Commission directed the several frequency advisory

⁵ 47 C.F.R. § 1.106(a)(1).

⁶ 47 C.F.R. § 1.106(n).

⁷ *Id.*

⁸ APCO petition at 1-2.

committees to develop technical coordination procedures to ensure no party would be unfairly disadvantaged in the frequency coordination process.⁹ In response to this direction, the Land Mobile Communications Council ("LMCC") -- of which APCO is a member -- adopted the technical procedures embodied in the Telecommunications Industry Associations Working Group 8.8 report ("TIA 8.8"). The TIA 8.8 establishes protocols for the coordination of applications for the 12.5 kHz offset channels, and ensures that such applications pose no threat of interference to incumbent licensees. The TIA 8.8 also takes into account whether an incumbent licensee on the 25 kHz primary channel is a public safety entity, and employs a stricter interference standard before an offset application will be certified. In fact, ITA held a tele-conference with APCO and the Personal Communications Industry Association ("PCIA") on October 29, 1997, where these stricter interference standards were discussed. At the end of this tele-conference, APCO's engineers and frequency coordinators indicated that they were satisfied that incumbent public safety entities were being sufficiently protected from potential interference.

8. Based on ITA's own experience, and on the reports it has received from other coordinators, the protocols embodied in TIA 8.8 have been so strict, that the vast majority of offset applications that have been certified have been filed by incumbents for the offset channels intersticed between their own channels. Nearly all applications for offsets that have been filed by non-incumbent entities have failed the TIA 8.8 technical restrictions. As a result, APCO's fears that non-public safety entities will quickly apply for, and obtain licenses for the offsets intersticed between public safety incumbents are unfounded.

9. APCO's fears are further tempered by frequency coordination procedures and the

⁹ *Second Report and Order*, ¶ 29.

Commission's rules. Section 90.313(c) of the Commission's rules requires a licensee to demonstrate that its assigned frequency pair is at full capacity before it may be assigned an additional frequency pair.¹⁰ This requirement prevents speculative applications, and should allay APCO's fear that all available offset channels will be immediately licensed before public safety entities have a chance to submit applications.

10. Additionally, as a certified frequency advisory committee, APCO receives notification of all certifications made by the other coordinators. APCO has the ability to contest on a technical basis any application that would present interference to an adjacent channel public safety incumbent. Procedures are in place that offer APCO, and any other public safety frequency advisory committee, an opportunity to demand the withdrawal of an offensive application. In fact, Section 90.159(c) of the Commission's rules provides a 10 day waiting period before a licensee may begin operating under conditional authority so that offensive applications may be withdrawn before any actual interference takes place.¹¹ These safeguards were put in place to address the very fears that APCO now claims require a limited freeze on the 470-512 MHz band.¹²

¹⁰ See 47 C.F.R. § 90.313(C).

¹¹ 47 C.F.R. § 90.159(c).

¹² ITA would also like to point out that APCO has submitted numerous application certifications for high power operations on the 450-470 MHz channel offsets. As the Commission is aware 450-470 MHz offset channels may not be licensed until seven months after the adoption of a low power migration plan, except when such applications are accompanied by technical certification that such high power operation will not impact any currently operating co-channel low power system. To date, no such technical certification has been provided by APCO to ITA. Absent sufficient technical showings, there would appear to be a much higher risk of harmful interference from these types of applications than from those that APCO is concerned with.

III. Conclusion

11. Because the APCO petition requests that the Bureau reconsider an action taken by the Commission in the *Second Report and Order* it is an untimely, misfiled petition for reconsideration and should be dismissed.

12. Procedural infirmities notwithstanding, ITA recognizes that the primary mission of the Commission is service in the public interest. That being said, nothing in the APCO petition, and no facts, suggest that the stay requested is in the public interest.

13. The refarming proceeding has lasted for more than five years, and the rules that went into effect on October 17, 1997, had been in the public record for six months. APCO has taken full advantage of its ability to participate in this proceeding, both by presenting filings to the Commission and through its representation on the LMCC's Board of Directors. An eleventh-hour, procedurally irregular petition cannot be allowed to jeopardize the investment that the rest of the PLMR community has made in this proceeding.

14. Because the facts show that APCO's fears are unfounded, the public interest will not be served by a stay at this late date. What will serve the public interest is the preservation of a transparent and predictable regulatory process, and the dismissal of the APCO petition.

Respectfully Submitted,

Industrial Telecommunications Association, Inc.

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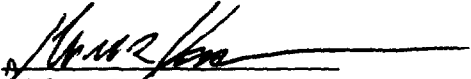
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